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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,264	10/20/2003	Tomoaki Kimura	JP920020194US1	2885

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EXAMINER

LEE, CHUN KUAN

ART UNIT

PAPER NUMBER

2182

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/689,264	Applicant(s) KIMURA ET AL.	
	Examiner Chun-Kuan (Mike) Lee	Art Unit 2182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) 7,8 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 2002-306830.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-2 and 9-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 6 and 13 of copending Application No. 10/689263. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons.

2. As per claim 1, referenced copending application (claims 1 and 6, application no. 10/689263) discloses almost all the functions and characteristics of the instant application, both have the same resulting purpose of ensuring the data written onto a recording medium is correct;

referenced copending application discloses (claim 1, application no. 10/689263) a section for detecting write error by determining the error information. While the instant application specifies the detection of write error using an "additional data"; and

referenced copending application further disclose (claim 6, application no. 10/689263) the storing of the "error information" while instant application disclose the storing of "additional data", both of which are used to determine the length of "block gap".

3. As per claim 2, reference copending application (claim 2, application no. 10/689263) is identical as to instant application.

4. As per claims 9 and 10, please see claims 1-6 in view of reference copending application (application no. 10/689263). Reference copending application further discloses (claim 13, application no. 10/689263) a program code to implement the functions disclosed above (claim 1, 2 and 6, application no. 10/689263). While instant application also disclose a computer program to implement the same functions.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-6 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lounsbury et al. (US Patent 4,637,023) further in view of Joeressen et al. (US Patent 6,212,660).

6. As per claim 1, Lounsbury teaches the system method of storing data onto a recording medium, wherein the data is divided into multiple of blocks for recording (column 4, lines 39-46). Further more, said system method comprise of:

a section (additional data storing section) for storing CRC (additional data) on said recording medium in association with said data to be written, said data being unincorporated with the CRC (reference numbers 112 and 124, Figure 1); and

recording (writing) of the data, which are separated by inter record gap (reference numbers 100, 102 and 130, Figure 1), onto said recording medium.

Lounsbury fails to teach specifically the determining of recording position based on additional data and the function of error detection in the block writing section.

Joeressen teaches the system method of receiving and transmitting serial data frames, wherein said data frames comprised of:

a check sum (CRC) field and length field (Figure 2);

determining the recording position for the data frame base on said check sum (CRC) field (column 1, lines 51-67; column 2 lines 1-13 and column 3, lines 44-65), wherein the subsequent data frame would obviously be a block gap away from the previous data frame;

obviousness of writing said data frame to the position determined based on said CRC field; and

obviousness of detecting error if said block gap does not comport with said CRC field , as a result of the received CRC field do not match with the valid code (column 2, lines 2-13).

It would have been obvious to one of ordinary skill in this art, at the time of invention was made to implement the determination of the recording position and the block gap in Joeressen's serial data based on check sum (CRC) field (additional data) into Lounsbury's system method of storing data onto a recording medium. Not only is the data in Lounsbury's system method transferred serially, but doing so will also add and expand flexibility to Lounsbury's system method of storing data onto a recording medium by increasing the accuracy of received (recorded) data frames and reduce cost and hardware area for digital integrated circuit (Joeressen, column 2, lines 19-41).

7. As per claims 2-6, please see claim 1 in view of Lounsbury and Joeressen. Lounsbury further teaches that said recording medium is a magnetic tape (column 4, lines 28-38) and said system method further comprising:

read circuitry (block reading section) for reading said multiple blocks from said recording medium (column 2, lines 60-62);

the obviousness of a recording position acquiring section for acquiring recording positions on said recording medium where said multiple blocks are respectively recorded, as said multiple blocks are read by said read circuitry (block reading section);

the reading and writing of data frames are implemented sequentially (column 4, lines 39-46);

the obviousness that the magnetic tape (recording medium) would be mounted on the system method (storage device); and

wherein said block writing section, when there is an error (impossible to write one block to a recording position on said recording medium) of writing to where said one block should be written, write said one block as well as new recording position (recording position change information indicating that the recording position of said one block has been changed to another recording position different from the recording position where said one block should have been written) (Figure 3 and 4).

Joeressen further teaches the obviousness that said system method further comprise of a block readout inhibiting section for inhibiting said multiple block from being read by block reading section when said reading positions acquired by said recording position acquiring section do not correspond to said check sum (CRC) field (watermarking data) to be recorded in association with said data frame to be written.

8. As per claims 9 and 10, please see claims 1-6 in view of Lounsbury and Joeressen.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun-Kuan (Mike) Lee whose telephone number is (571) 272-0671 and email is chun-kuan.lee@uspto.gov. The examiner can normally be reached on 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Popovici Dov can be reached on (571)272-4083. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-2100.

Mailed responses to this action should be sent to:

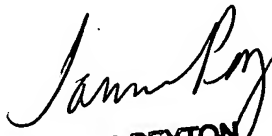
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Faxes for Official/formal (After Final) communications or for informal or draft communications (please label "PROPOSED" or "DRAFT") sent to:

(571) 273-8300

Hand-delivered responses should be brought to:

USTPO, Randolph Building, Customer Service Window
401 Dulany Street
Alexandria, VA 22314


TAMMARA PEYTON
PRIMARY EXAMINER

C.K.L.
09/07/2005